



सत्यमेव जयते

## **JHARKHAND LEGISLATIVE ASSEMBLY**

### ***Decision of the Speaker, Jharkhand Legislative Assembly under Tenth Schedule to the Constitution***

**JAHRKHAND LEGISLATIVE ASSEMBLY SECRETARIAT, RANCHI**

**13th August, 2009/22nd Shrawan, 1931 (Saka)**



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### *Decision of the Speaker, Jharkhand Legislative Assembly under Tenth Schedule to the Constitution*

Mr. Samual Paul Karketta

&

Sri Arjun Munda, the then M.L.A. leader  
of Bhartiya Janata Party, Legislative Party ..... Petitioners  
in Jharkhand Vidhan Sabha (At present M.P.Lok Sabha)

Versus

Mr. Ravindra Kumar Rai, M.L.A. .... Respondent

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JAHRKHAND LEGISLATIVE ASSEMBLY SECRETARIAT, RANCHI

13<sup>th</sup> August, 2009/22<sup>nd</sup> Shrawan, 1931 (Saka)



झारखण्ड विधान-सभा सचिवालय  
अधिसूचना

13 अगस्त, 2009

संख्या-कार्मिक-03/07-2630/वि०स०--एतद् द्वारा सर्वसाधारण की जानकारी के लिए भारतीय संविधान की दसवीं अनुसूची (अनुच्छेद 191(2) के साथ पठित) के तहत श्री रविन्द्र कुमार राय, सं०वि०स० के विरुद्ध दल परिवर्तन के आधार पर विधान-सभा की सदस्यता से निरहता संबंधी श्री सैमुएल पॉल केरकेट्टा, बी०-III-558 धुर्वा, राँची तथा श्री अर्जुन मुण्डा, पूर्व सं०वि०स० द्वारा दायर याचिकाओं पर सुनवाई के उपरान्त अध्यक्ष, झारखण्ड विधान-सभा द्वारा दिनांक 13 अगस्त, 2009 को दिए गए निर्णय (संलग्न)को प्रकाशित किया जाता है।

माननीय अध्यक्ष महोदय के आदेश से,  
कौशल किशोर प्रसाद,  
प्रभारी सचिव,  
झारखण्ड विधान-सभा, राँची।

**BEFORE HONOURABLE SPEAKER OF THE JHARKHAND VIDHAN SABHA, RANCHI**

**Mr. Samuel Paul Kerketta**

**And**

**Sri Arjun Munda, the then M.L.A. Leader of  
Bhartiya Janata Party, Legislative party**

**In Jharkhand Vidhan Sabha, (at present M.P. Loksabha).....Petitioner  
Versus,**

**Mr. Ravindra Kumar Rai, .....**

**.....Respondent**

In the matter of application filed by Samuel Paul Kerketta on 1<sup>st</sup> March 2007 for the disqualification of membership of Sri Ravindra Kumar Rai under 10<sup>th</sup> Schedule of the constitution of India read with article 191(2) of the constitution of India and in the matter of the petition filed by Sri Arjun Munda, the then M.L.A. leader of Bhartiya Janta Party, Legislative party in Jharkhand Vidhan Sabha, Ranchi on 26-08-2008 for the disqualification of Sri Ravindra Kumar Rai, M.L.A. under the provision of 10<sup>th</sup> Schedule read with article 191 of constitution of India.

**facts:**

**Main points in the pleading**

- (1) Mr. Samuel Paul Kerketta, resident of B/III, 558, sector-3 Dhurwa, Ranchi. i.e. an outsider filed an affidavit before Hon'ble Speaker on 1<sup>st</sup> March 2007. He filed an application & prayed initiation of an appropriate action for disqualification of Sri Ravindra Kumar Rai, M.L.A. from the membership of Jharkhand Vidhan Sabha. It was stated in the petition that Mr. Rai was elected as a member of B. J.P. from Dhanwar, bearing constituency No-28 later he joined another political party, Jharkhand Vikash Morcha, (Democratic). His act of joining Jharkhand Vikash Morcha falls under the provision of 2(1)(a) of the constitution of India. In support of the allegation a copy of judgment delivered by Hon'ble supreme court in the case of Ravi S. Nayak and other reported in 1994 supplementary S.C. cases 641 is annexed. In that case Hon'ble Supreme Court held that even in the absence of formal resignation from the membership of a party to which the member belongs, an inference can be drawn, from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs. Further it was stated that Sri Ravindra Kumar Rai although has been elected member of Jharkhand Legislative Assembly on the ticket of Bhartiya Janata Party, which is a political party, he as by his action, utterance and the conduct made himself disqualified from the membership of Jharkhand Legislative assembly. As he is voluntarily given up membership of his political party, namely Bhartiya Janata Party and has associated himself with another party namely, Jharkhand Vikash Morcha. (Democratic) Party. In this context various newspaper cuttings were annexed along with the application.
- (2) This petition was taken in cognizance by the speaker along with the application. notice was issued vide letter No-1255 dated-05-4-2007 to Mr. Ravindra Kumar Rai, M.L.A. to furnish the reply along with the documents within 15 days as to, why not this petition as accepted for hearing.
- (3) Respondent Mr. Ravindra Kumar Rai, M.L.A. has requested for extension of time to file the reply on dated 16-04-2007 and 17-05-2007 which was accepted by the speaker.



- (4) The reply was filed by the respondent on 8<sup>th</sup> June 2007. The main points of the reply were to dismiss the petition filed by Samuel Paul Karketta as being not admissible and not maintainable under the rules.
- (5) Since the prayer was for rejection of application on ground of the prima-facie in admissible under the rule. No answer or comment has been made on the points raised by applicant in his petition.
- (6) The fresh show-cause notice issued by the speaker vide letter No- 1716 on dated-10-7-07 to file the reply up to 23<sup>rd</sup> July, 2007, otherwise one sided decision could be taken. It was mentioned in the letter that however there is no legal validity of the letter of respondent on the basis of several orders passed by the Honourable courts, however the points raised by the petitioner was taken into cognizance of the speaker and it should also be taken as suomotto case.
- (7) Again a letter was sent to Mr. Arjun Munda, the then leader of B.J.P. legislative party in Jharkhand Vidhan Sabha, Ranchi to furnish his view/opinion on or before 23-07-2007.
- (8) Respondent Sri Rai has requested for extension of the time to file the reply again on 20-07-07 and it was accepted by the speaker.
- (9) Mr. Rai has filed his reply on 6<sup>th</sup> August 2007. The main points of his submission were as follows:- the petition is ab-initio flawed and prima- facie in-admissible under the disqualification on ground of defection rules, 2006 under rule 6(1) of the Jharkhand Legislative Assembly disqualification on ground of defection rule, 2006, speaker can take suo-motto notice of a member becoming subject to disqualification on ground of defection.
- (10) In any case, in the present case the requirement of rule of 6(1) are not made at all in such as :-
- (i) The petition has not made by the member of Jharkhand Legislative Assembly.
  - (ii) Speaker did not take any suo-motto notice of the alleged defection, and even now what the respondent is required to respond to is a complaint by a private person with no locus standi in the matter. Suo-motto notice by definition means notice take by an authority on its own i.e. without anyone else bringing it to its notice.
  - (iii) In favour of the above mentioned submission a part of the judgment of Punjab and Haryana Court is mentioned which is as follows:-  
 "The Purpose of requirement of a reference obviously is that even when a question as to the disqualification of a member arises, the Speaker is debarred from taking suo-motto cognizance and he would be seized of the matters only when the question is referred to him by any interested person. The speaker has not been clothed with a suo-motto power for the obvious reason that he is supposed to be none party man and has been interested with the jurisdiction to act judicially and decide the dispute between the conflicting groups".
- (11) Respondent as replied parawise claims that he has not given up membership of the B.J.P. He continues to be a member of B.J.P. and has not joined, as alleged, Jharkhand Vikash Morcha (Democratic) Party or any other political party in the reply of Para (5). He sought a Judgment of Hon'ble Supreme Court, which was reported as 1994 supplementary (2) S.C.C (641). It was mentioned that going to the governor accompanying the leader of a rival group against their party (MGP) to taken claim to form an alternative Govt. (The fact of going to the governor in the said company not denied by the two members at any stage).
- (12) Not controverting a clear statement made before the speaker to the effect that the two members had given up the membership of their party M.G.P. and had said so openly. (the two members were physically present and had every opportunity to deny to the points made in the statement but they did not do so)



- (13) The submission of the respondent is that in the present case, on the other hand, nothing of the kind happened and the petitioner has not pointed out any acts on the parts of the respondent, which could constitute such 'conduct'. Also he has not produced any direct or documentary evidence to support his vague allegation that the respondent had given up the membership of his party. In reply of para (6), it is categorically reiterated that the respondent has not voluntarily or otherwise given up the membership of his party B.J.P. or joined any other party. He has never violated any party directive on disobeyed any whip. His party is a democratic party, which allows freedom of speech and dissent. The respondent, has not indulge in any conduct, which can be deemed to his having given up his party membership.
- (14) Respondent stated that what has been produced by the petitioner as annexures are the unsigned photocopy of the some newspaper clippings which is at variance with the rule 6 (7) of the Jharkhand Vidhan Sabha members. (Defection of rules 2006 of Jharkhand Vidhan Sabha) Rule 7(2) state that if the petition does not comply with the requirements of rules (6). The "speaker shall dismiss the petition."
- (15) He also cited that as observation by the court in several cases newspaper report do not construed evidence. A newspaper report can not be taken as evidence. In addition to that he claims that the respondent is regularly paying his contribution which is required to be paid as a member of B.J.P. and sum of rupees eleven hundred per months is being paid by the answering respondent every month to the B.J.P. which is being regularly accepted by the political party namely B.J.P. Hence he has prayed, that the petition be dismissed forth with in the interest of protecting the honour to the house and its members against frivolous and unsubstantiated vague allegations from unauthorized obscure outside quarters.
- (16) Another rejoinder was filed by the respondent on 03-10-08 He refuted the charges labelled by Sri Samual Paul Karketta the main points of the rejoinder is as follows:-  
Mr. Karketta has filed a petition for the purpose of political motivation and to provide advantages to certain political part as well as alliance and to provide advantages to certain political part as well as alliance and to humiliate me.
- (17) It was mentioned by the respondent that he used to take part in the proceedings of the house and requested to the speaker that he has already seen his conduct within the house. He again reiterated to the speaker that he may never find any complaint against him either by the conduct or by any action which is, contrary to the decision of his political party. He said that not a single complaint was filed against him by his party, regarding this matter. To disqualify a member form the membership of house only on the basis of cuttings of newspaper can not be a valid evidence.
- (18) In the public interest if some opinion is kept in public addresses and movements, could not be a ground of disqualification under anti defection. It is rather adverse to the social values. It was stated that Bhartiya Janata Party believe in democracy and it is a democratic political party and to put any opinion if public addresses could not be taken in the canvass of 10<sup>th</sup> schedule. It was stated that the leader of opposition as well as leader of Bhartiya Janata Party Mr. Arjun Munda had submitted a list of M.L.As on 31.03.07 before the hon'ble Speaker and in that list his name was also present.
- (19) A petition was filed on 26.08.08 by Mr. Arjun Munda, M.L.A. who is the leader of Bhartiya Janata Party. Application was filed under para (6) of 10<sup>th</sup> schedule of the constitution of India and Jharkhand Legislative Assembly members (Disqualification on the ground of defection) rule, 2006 for disqualification of said member from the membership under the provision of 10<sup>th</sup> schedule read with article 191 of the constitution of India.



- (20) Most of the charges labelled by Mr. Arjun Munda, was the same as the charges labeled by the 1<sup>st</sup> petitioner Mr. S.P.Karketta. It is pertinent to mention that such petition was filed in accordance with the para (6) of the 10<sup>th</sup> schedule of the constitution of India. He has filed the application along with affidavit and annexures were duly counter-signed and newspaper clippings are also counter-signed by the petitioner. The main point of the petition is as follows:-
- Sri Ravindra Kumar Rai is the member of Bhartiya Janata Party and he was elected in the last assembly election, which was held on February 2005 and he has been sitting of the opposition bench with other members of B.J.P.
- (21) A delegation of Jharkhand Vikash Morcha under leadership of Sri Babulal Marandi, Who is the leader of Jharkhand Vikash Morcha met his excellency Governor of the state with the delegation of party members of 18.08.08 and submitted a memorandum for imposing president rule in the state. It is categorically mentioned that Mr. Ravindra Kumar Rai, M.L.A. had also joined the delegation of Jharkhand Vikash Morcha and has met the governor.
- (22) Sri Ravindra Kumar Rai worked actively against Bhartiya Janata Party in the by-election of parliamentary constituency Koderma, Palmau & Jamshedpur and assembly constituency of Simaria. In support of that, the newspaper clippings are duly attached. Mr. Rai is actively participation in the various programmes, meetings, Yatra & rally of Jharkhand Vikash Morcha led by Sri Babu Lal Marandi throughout the states. Mr. Rai was suspended for anti party activities and show-caused, but he has not submitted his explanation to the party till date. The state secretary of B.J.P. sent an explanation letter to Mr. Rai on 17.10.06. It was mentioned that there is urgent necessity under the circumstances of deciding the question that the aforesaid member has subjected himself to disqualification of the ground of defection and has already stood disqualified on the day he has voluntarily given up the membership of his political party on basis of R.S. Rana and other versus S. Prasad Maurya case. It is mentioned that approaching governor in defiance of cabinet decision of government or tender of original party amounts to an action within schedule 10 para-2 (1) (a) of the constitution.
- (23) An example was given of the case of Mr. Jai Narayan Pd. Nishad form the membership of Rajya Sabha on the ground of defection.
- (24) Under the facts and circumstances it was prayed that Mr. Ravindra Kumar Rai should be disqualified in terms of Para 2(1)(a) of the 10<sup>th</sup> schedule read with the article 191 of the constitution of India.
- (25) The petition was sent to Sri Ravindra Kumar Rai, the respondent on 27.08.08 by the Speaker to file his reply on or before 28.08.08 up to 5 P.M. Again Mr. Rai has sought extension of time vide his letter dated on 28.08.08, extension of ten days to file the reply was permitted.
- (26) Mr. Rai filed a reply on 1<sup>st</sup> Nov, 2008. He refuted the allegation labelled by his party leader. Mr. Arjun Munda. The main points of reply which is as follows:-

Our party B.J.P. itself made demand of president's rule and fresh mandate of the people and a delegation led by the party state president hon'ble member, Sri P.N.Singh met the governor for the same and therefore obviously his conduct was neither against his party nor against the direction of the party. He said that the newspaper reporting is incorrect. He mentioned that Jharkhand Vikash Morcha is not a recognized party in terms of provision of Representation of the people Act, 1951 and it is not correct to treat the same as "party". Obviously the hon'ble member/petitioner has got not cogent, reliable and intrinsic evidence to support of the allegation. Respondent mentioned that he had never worked against the official candidate of the B.J.P. it is incorrect to allege that he has voluntary left the membership of the party i.e. Bhartiya Janata Party. Actually he has paid for the monthly subscription of as eleven hundred to party fund, which was duly accepted till the month of Sep. 2008 and it is only since the month of Oct. 2008 that with oblique & ulterior reasons, the acceptance of subscription



got stopped. He has clearly mentioned in his reply that Jharkhand Vikash Morcha is not recognized as Registered Political Party under the provision of the R.P. Act, 1951 and section 29(A) of that act. as such, as to alleged though baseless & devoid of merit do not constitute any basis to support the claim of the petitioner and contend of Para (II) are not at all cognizable by the Hon'ble Speaker.

- (27) It would be pertinent to mention in course of vote of confidence of Govt. headed by Sri Sibu Soren the answering respondent participated in voting and voted against the U.P.A. government. Finally the respondent submitted that neither he has accepted the membership of any other party nor has violated mandate of the party i.e. the Bhartiya Janata Party. He clearly mentioned that so for the case of J.N.P. Nishad is concerned, the same is totally on different footing in as much as Sri Nishad resigned from the party which had not been accepted by the party, where as the answering respondent has neither resigned from the membership of the party nor ever violated by authority or direction of party. Affidavit and photocopies of Bank Account was accompanied along with this reply.
- (28) Date of Hearing of the case was fixed on 29-11-08 in the open court. Petitioners and the respondent were allowed to present before the court either personally or through their advocates.
- (29) On request of petitioner Mr. Arjun Munda, M.L.A. a witness Sri C.P. Singh who is the Chief Whip of B.J.P. was also allowed to attend in the hearing and was also interrogated.
- (30) Mr. Ajit Kumar, Counsel for petitioner, Mr. Arjun Munda stated that the respondent Mr. Ravindra kumar Rai has gone to meet to his excellency, Governor on 18-8-08 along with the delegation of Jharkhand Vikash Morcha, which was led by Mr. Babulal Marandi, M.P. and submitted memorandum for imposing president's rule in the state. Mr. Rai had joined the delegation of Jharkhand Vikash Morcha Party and has accompanied with them to meet the governor. He further stated that in the by-election of Koderma, Palamu, Jamshedpur, the respondent has worked against the official candidate of B.J.P. and campaigned actively against B.J.P. candidate.
- (31) During the Rajya Sabha election a Whip was issued to all the B.J.P. members to caste their vote in favour of B.J.P. nominee, however the opposite party casted his vote of first preference in favour of B.J.P. nominee and on his second preference vote, he had casted deliberately in favour of independent candidate. Mr. Parimal Nathwani, who was finally elected by the votes of second preference, which is clear-cut violation of the Whip of the party. Mr. C.P. Singh, who is the Chief Whip of B.J.P. gave a statement as a witness, about the violation of whip, which was not intimated to speaker.
- (32) Counsel for the petitioner Mr. Arjun Munda again stated that whenever within the house or outside the house. Party took any decision of any movement either to sit on dharna before the Rail or any other occasion the respondent has kept himself away from the party direction. It is held in the Supreme Court at various occasions that if he has original character then his conduct come under the purview of schedule 10<sup>th</sup> and under para 2(1)(a) action can be taken against the member. It is not necessary to resign from the party and join another political party. No documentary evidence is required, even on the conduct of the member, action can be taken. Again it was stated that this is what, he has replied. Other statement he has given, hence it is pertinent to draw attention of the honourable chairmen that list of members of B.J.P. submitted on 30-3-07 by honourable member, Sri Arjun Munda, Leader of legislative party duly find mention the name of answering respondent. Respondent says that in the list, which is provided by the Party leader his name is duly mentioned. He again addressing to the Hon'ble



Speaker requested to indicate here that their party has suspended the respondent. He is not removed from the party, hence for all other purposes until unless he is not removed from the party, he will be treated member of the party. Now the question is that he has misconducted himself, therefore he should be removed. Again he has quoted several references of newspaper clippings.

- (33) Counsel for petitioner Mr. Ajit kumar, again stated that such action, activities and conduct of Sri Ravindra kumar Rai, so and so, it is clear that he has voluntarily left his membership of original political party i.e. Bhartiya janata party and disqualify under terms of para 2(1)(a) of the 10<sup>th</sup> schedule of the Constitution of India.

- (34) He quoted the judgment delivered by Supreme court of India in the case of Ravi S. Nayak that a person may voluntarily give up his membership of political party even though he has not tendered his resignation from the membership of the party even in the absence of the formal resignation from membership an inference can be drawn from the conduct of a member that he has given up membership of his political party to which he belongs. This judgment was also repeated and re-observed in the Rajendra Singh Rana case. The things are ample clear that his whole conduct of years, together will be enough to prove that he has misconducted himself, he has left the party voluntarily and, therefore action is a must under schedule 10<sup>th</sup> in the Provision pf 2(1)(a), relevant part of Jagjit Singh was also mentioned, which is as follows – while considering question of compliance, with the principal of so and so in the present case. Petitioners were elected as a independent members and disqualified under part 2(2) for having joined the congress party. Speaker has principally relied on.

- (1) Video Recording of interview on television wherein the petitioner had admitted and acknowledged joining congress party.
- (2) Video Recording of participation of petitioners in meeting of congress legislative party in premises of the legislative assembly soon after the said interview.
- (3) And petitioner's signature on the C.M.P proceedings register.

- (35) The counsel for petitioner Sri Arjun Munda, requested to the Speaker stated that the very object of the anti defection law had been that a person who has been elected on an agenda of particular political party either B.J.P or any other political party. He is elected on their agenda. Can he go against the agenda of the party on which ticket he has won the election. This will be a two fold cheating and it will also lead to a horse trading, therefore, this anti defection law has this object that if the person misconduct himself, if he has acted in such a way that he has lost his independent character, he has lost the character of B.J.P then certainly his conduct which have led the same on the other members of the B.J.P then he should be outset from the house, this is what he had to end with. Mr. Ajit Kumar says this person was irony and thus it is very sad to say that for a long time, whenever he got away, he got an opportunity, he has done everything against the party. He has never participated in the meetings of the party, never participate in any other programme of the party. So in the end, Arjun Munda said that he is completely cheating the public as well as the party and even to the court that is all he had to indicate that Mr. C.P. Singh is here, if he does not cross examined, then affidavit can be taken on the record.

- (36) Mr. C.P. Singh, M.L.A. witness for the same Shri Arjun Munda was allowed to put some facts before the Court. He stated that respondent Mr. Ravindra Kumar Rai played an active role since the formation of Jharkhand Vikas Morcha Party. He remained absent in all the meetings of B.J.P. As a chief whip it was his responsibility that during budget speech or in other circumstances he had to put the name of the concerned members who will take part in the proceedings. He requested the Hon'ble Speaker saying that on behalf of B.J.P. as being chief whip of the party. He had never recommended the name of Mr. Ravindra Kumar Rai to



participate during the discussion of the House. He again remembered the Hon'ble Speaker as the Speaker had allowed independently Mr. Ravindra Kuamr Rai to speak in the House on several occasions. His conduct was severely indisciplined and contrary to the honour of the party. Mr. C.P. Singh again stated that if such members were expelled from the party then naturally he remained free from the obligations of the party and hence for that reason he was not dismissed from the party. During the cross-examination Mr. Indrajeet Sinha, Advocate for the respondent requested to the Court that this is being fully recorded. The main points of the interrogation in pertinent to state here. Shri Indrajeet Sinha (Advocate) asked whether he had informed all the M.L.A.s of the party regarding Rallies and other programmes of the party.

Shri C.P. Singh, MLA (Witness) : Yes, regarding all the programmes which is held in Ranchi.

Indrajeet Sinha, (Advocate): Not only for Ranchi, tell me about the entire state.

Shri C.P. Singh saying yes told that whenever any big programme either go to jail to rally in Dumka, rally in Ranchi or in any part of the State, each and every MLA of the party is intimated. In addition to that district presidents are informed and they inform the respective block presidents. There is chain system within the party which inform up to the booth level volunteers regarding this on the basis of that they attend rally, go to the jail programme or any other meetings, everything is informed through a system.

Indrajeet Sinha, (Advocate) asked whether he had ever informed Shri Ravindra Kr. Rai?

Shri C.P. Singh : Many times, in every programme.

Indrajeet Sinha (Advocate) : He is telling lie, because my client says that never he got the information regarding this neither any proof nor you have mentioned it in the oath paper.

Shri C.P. Singh said that so far as the proof was concerned he shown the bunch of papers and requested him to see the bunch of paper which was the register of party meetings.

Indrajeet Sinha (Advocate): It was noticed that the register of meetings he asked whether he had intimated the respondent about the programme.

Shri C.P. Singh replied that he had sent. Being the chief whip of the Legislative Party it was his responsibility to intimate the members regarding each and every meeting but he has never participated in either of the meeting because he does not recognize B.J.P. as his own party. He recognizes Jharkhand Vikas Party Morcha as his party and hence he never turned up.

Shri Indrajeet Sinha (Advocate) asked whether he had participated in Dumka rally?

Shri C.P. Singh: replied that he was not there.

Shri Indrajeet Sinha (Advocate): asked Shri C.P. Singh whether he had attended all the rallies of the B.J.P?

Shri C.P. Singh: replied Certainly.

Shri Indrajeet Sinha (Advocate): addressed his attention that he had already said that he had not attended Dumka Rally.

Shri C.P. Singh: Replied as he was not the leader of state level, hence he had not attended the rally of Dumka. In the rally of Ranchi he was present there.

Shri Indrajeet Sinha (Advocate): During the vote of confidence on the floor, whether the respondent has voted against the whip or in favour of the party whip.

Shri C.P. Singh: Inside the House his conduct is according to his convenience. Inside the House he acted accordingly on the basis of profit and loss.

Shri Indrajeet Sinha (Advocate): Simply my question is that whether he has voted against the whip or not, answer only in ayes or noes.

Shri C.P. Singh: He has not voted against the whip.

Shri Indrajeet Sinha (Advocate): Regarding Rajya Sabha poll a letter was issued by you on 26.03.2008. Have you written about first preference and second preference vote in the letter?

Shri C.P. Singh: Replied that regarding all the decision. Each and everything can not be written.



Shri Indrajeet Sinha (Advocate): Showing the photo copy, requested the Hon'ble Speaker to give the permission to keep it on record and mark it as exhibit. As he would rely upon that. It is his signature. Yes all right (Evidence of Mr. C.P. Singh witness is over).

Shri Indrajeet Sinha Advocate for respondent stated that he had given his reply, he relied on Supreme Court Judgements, which categorically say that the Newspaper reports are not admissible in any proceeding of Court. Again he has stated that as stated by Mr. C.P. Singh just before the cross examination that they had suspended Mr. Ravindra Kumar Rai till date he is not dismissed. He said that if he was dismissed from the party or expelled from the party then he could become free. Perhaps he told the same word that after being free he could do according to his choice. He again reiterated that the word used in the 10<sup>th</sup> Schedule is that voluntarily given up his membership. Voluntarily means by his own choice in the House looking about his conduct. If we see about his conduct that he has never invited me neither gave any information about the party meeting nor he has submitted any proof, he never called him as he was suspended. Then how can he go to attend the meeting? If any Government employee is suspended then how can he do the work in the office and can any Government official say that he is not doing the work. You have suspended me and you are telling that you do not come to the duty. When you have not intimated me. You have not invited me to attend the meeting then how can I participate? He again stated that you keep me as a suspended member, within the party, you do not give me any work and you do not allow me to do any work as an original, as an independent person. I am not telling anything against your party. You used JVM word in your affidavit that Mr. Ravindra Kr. Rai has never participated in the meetings of BJP in his Assembly Constituency Dhanwar after the formation of JVM Shri Indrajeet Sinha again stated that the Judgments rely upon them, My Learned friend has relied mainly on two judgments, one is Rajendra Singh Rana and the other the Sri Jagjeet Singh. If we see judgments of Jagjeet Singh case then we see that his main thrust is that Hon'ble Speaker can use his personal knowledge to decide a case so far as 10<sup>th</sup> Schedule is concerned, If I am not wrong, this is what they are trying to say. Again he stated that Supreme Court has held that Speaker is correct to that extent being using his personal knowledge make it verify the signature. Speaker has verified it. Supreme Court does not held that an Hon'ble Speaker can use his personal knowledge. Again he stated that the Supreme Court in this decision kilhotto Hollohan 1992 SC has said that the disqualification imposed by paragraph 2 (1)(b) must be so construed as not to unduly infringe on the freedom of speech of a member. Paragraph 2 (1)(b) would have to be limited to vote on motion of confidence or no confidence in the Government that the motion under consideration relates to the matter which was as internal policy and programme of the political party. He further stated that it is not case like either Jagjeet Singh or Maha Chandra Prasad or Rajendra Singh Rana case. In all these cases the Legislature who are involved in the case have gone to the Governor and said that leader of opposition should be given a change of chief minister. In the case of Maha Chandra Prasad a Congress Party MLC has contested the parliament election as an independent candidate, but here this is not the case. He is saying that I am walking along with the persons of another party. I have to say that you do not allow to move along with you. In my affidavit I have already written that whenever I move, where as I go. It was my invitation, it was my public meeting, It was social issue where anyone can go.

(37) Mr. Indrajeet Sinha again replied on the question of speaker that if a person living within the party and he does not go to another party, but keeping in the party and by his action. It is completely will of the party there by keeping himself under ground, whether 10<sup>th</sup> schedule will be applicable upon him or not? Mr. Indrajeet Sinha replied upon the question that it will be applicable but I have to say that as on date. There is no material on the record. So far the legal



position has been concerned the Hon'ble Speaker is absolutely correct so far material or record are concerned law that can be seen in the law of facts. Again he replied that he has gone to his Excellency of the state.

(38) Again Mr. Ravindra kumar Rai respondent himself stated that, that day in the delegation of the B.J.P.'s, some other party M.L.A's, also accompanied the same

(39) Mr. Indrajeet Sinha, Advocate for the respondent stated that the respondent has gone to the governor on common interest of the party. the question is here that as Supreme Court says, if the act of a member is against the parties norms and for his personal gain, If he say any things that is wrong here at this position there is no personal gain. If president rule imposing in the state then there is no personal gain of Mr. Ravindra Kumar Rai, my wish is the same as B.J.P. Being a citizen of India Mr. Rai is also in that favour. I know that governor is the head of the State as well as legislature, if I have gone and met with the governor where I am wrong saying that this is the State of affairs in the State of Jharkhand. There is nothing wrong in it, if I exercise the constitutional rights then it is not in the purview of anti defection claims to be the Democratic Party. It is now because our party is in handful view the entire case as per my client because he is becoming a victim of petty politics i.e. the party's internal politics. Again he Stated that voluntarily is the word. The opposite parties himself say that he has not expelled Mr. Rai from the party because after expulsion he will be just like the free bird My Lord, his attitude is very much clear admission on the part of B.J.P. that yes we wanted, we do not want him but he will not let him go. A legislature representative of the people can not address to people. He may not address the mass so far as the others judgment of Rajendra Singh Rana case is concerned. Firstly in that case that's not a voluntarily giving up membership of whip that was a case of split. So that is a basic difference. Mr. Indrajeet Sinha said that as it is stated by the petitioner that Mr. Ravindra Kumar Rai has not campaigned for the B.J.P. and during the cross examination opponents party says that I have not requested him for the same then. Everything is clear. Again Mr. Indrajeet Sinha stated that I have followed whip within the House they had never recommended the name of Mr. Ravindra Kumar Rai to speak upon any subject when he does not recognized me as the party member then where is the question of voluntarily giving up membership. That is the admission of his part that he has explained that on purpose and he has not allowed him to participate.

(40) Mr. Ajit kumar, Advocate for the petitioner, Mr. Arjun Munda requested the court to read the show cause letters which were provided to the respondent earlier. Again he stated that the aforesaid member has suspended for anti party activities and show caused, but he has not submitted his reply till date.

(41) In the last respondent Mr. Ravindra Kumar Raj himself has pointed out some facts. He requested saying to speaker that during the discussion the question of morality was discussed so far the matter of Rajya Sabha election is concerned party has issued in any whip however he obeyed the direction of the party, he put also the first preference vote in the favour of B.J.P. candidate and by using constitutional rights. He had polled a second preference vote in favour of the independent candidate and the same was shown to the chief whip and that second preference vote was deciding in the election to beat the UPA candidate.

(42) Mr. Ravindra Kumar Rai again stated that he had to say nothing more, there was not a question of violation of whip. On 18<sup>th</sup> at 11.00 a.m. a delegation of B.J.P. had met to his excellency governor and put the same demand as was placed by Mr. Babulal Marandi, M.P. at 11.30 a.m. He is our M.P. and being an M.P. he had requested him personally to participate in the delegation in the common interest of the people. Mr. Rai again stated that until 30 months, chief whip of his party has extorted his constitutional right and he says that he has done the



work of morality. Being a member he has also the right to speak in the house, but he never recommended his name before the speaker to do the same. Mr. Ravindra Kumar Rai has given the example of a delegation of Mr. Lalu Prasad Yadav, Ram Vilas Paswan and Mr. Nitish Kumar, which has met the Hon'ble president of India on the matter of Maharashtra.

- (43) Mr. Ajit Kumar, advocate for the petitioner stated that Mr. Ravindra Kumar Rai was invited in the meeting of J. V.M. because he was the founder member. He won on the ticket of B.J.P. and do the election work for another party which is completely illegal. Therefore action should be taken under 10<sup>th</sup> schedule which is necessary therefore a complaint has been filed from 2006 to till date, he remained suspended and he is of a view that it is very good. He has never tried to put his side before the party. If chief whip has obstructed him to put his views in the house then why not he complained against him. He has completely forgotten the agenda of B.J.P. this is what he has admitted similarly in his own admission he has said that he gone to the governor. In his own admission he has said that he participated in the function of others parties. In the last Mr. Indrajeet Sinha advocate from respondent stated that to end that now I summarize it. I am again emphasizing that the action of Mr. Ravindra Kumar Rai was not voluntarily given up membership, the whole atmosphere is created by the opposite party in such a way that I have to succumb in it and nothing more, none of my action was voluntarily and this is my reply.
- (44) During the hearing a counter affidavit has been filed by Sri Ravindra Kumar Rai M.L.A. on 29<sup>th</sup> November 2008. The main points of the counter affidavit were that the respondent has never voted or abstain from voting in the House contrary to the directions of his party. He stated that so far Para 2(1)(b) is concerned for this purpose the direction given by the political party to a member belonging to it, the violation of whip may entail disqualification under Para 2(1)(b) would have to be limited to a vote of motion of confidence or no confidence in the Government or where the motion under consideration relates to a matter which was internal policy and programmed of the political party on the basis of which it approached the electorate.
- (45) He further stated that the ban under 10<sup>th</sup> Schedule Para 2(1) is only against leaving the party or voting or abstaining from voting inside the House contrary to the party direction. The respondent always voted in the House in accordance with the directives of his party. It is not correct to say that the members who met the Governor were part of a delegation of any political party. The Governor is a constituent part of the State Legislature and as such every member is entitled to meet him and expressed his views. To support his suggestion before the Governor for seeking a fresh mandate of the people can not be said to amount leaving the party or to a vote in the House contrary to party direction. In fact B.J.P. itself was for President's Rule, for seeking a fresh mandate from the people. Upliftment of backward classes and eradication of evil of poverty, corruption which are national issues and require immediate attention.
- (46) He further stated that the party finds that any of its members abiding by its policies or not promoting his interest and activities, it can initiate disciplinary proceedings against him, suspended him from membership or even expelled him from the party. But even a suspended Member remains a Member of the House and of the party. The party can not deprive a Member from the Membership of the House or take away his party level. The scope of the 10<sup>th</sup> schedule is limited only to the case of a member leaving ones party or disobeying its directive for voting in the House.
- (47) Respondent again stated that under the law of the 10<sup>th</sup> schedule a member elected as a party candidate must continue only as a member of that party and can not at any stage be regarded as anything but as member of that party except in case of merger of his party with another. In case defection of a member is established he loses the membership of the house. Again he stated that in as much as the B.J.P. the political party of the respondent was itself in favour of



president's rule and seeking fresh mandate of the people. The respondents supporting the proposal before the Governor was certainly not acting in defiance of his party. In the last he referred the case of Sri Jai Narayan Nishad as entirely misplaced. He stated that the privilege committee of the Rajya Sabha and the Hon'ble Chairman of the House had reached the conclusion that Mr. Nishad had voluntarily given up the membership of his party by resigning there from. Also he had allowed his name to be used for another political party. In the present case, the respondent has neither resigned from the party nor he has allowed his name to be used in any campaign from any political party. By citing such cases the petitioner is only trying to confuse issues in the absence of any evidence to prove his allegations.

- (48) A written statement was filed by Mr. Ravindra Kumar Rai, the respondent on 12<sup>th</sup> December, 2008 i.e. after the date of hearing. The main points of the written reply is as follows:

In the petition filed on 27-08-2008 Sri Munda has made similar allegations against Sri Ravindra Kumar Rai by stating that Sri Ravindra Kumar Rai has joined hands with the JVM as Sri Ravindra Kumar Rai accompanied Sri Babu Lal Marandi to the Raj Bhawan and met his excellency, the Governor on 18-08-2008 and requested for imposing president rule in the state. It has further been alleged that Sri Ravindra Kumar Rai has been actively campaigning against the BJP party candidate in the by-election held for Koderma, Palamau and Jamshedpur parliamentary constituencies and Simaria Assembly Constituency. It has further been alleged that Sri Ravindra Kumar Rai has also been participating in various programmes, meetings, Yatras and Rallies of JVM led by Sri Marandi throughout the state.

- (49) Regarding these matters submission of Mr. Ravindra Kumar Rai is as follows:

Admittedly Sri Ravindra Kumar Rai has neither tendered his resignation from BJP nor till date has been removed by the BJP. On the contrary Sri Ravindra Kumar Rai in his reply has contended that the BJP had accepted his monthly subscription fee of Rs. 1100/- (Rupees eleven hundred) till August, 2008. Further despite suspending him and issuing him show cause the BJP has not taken any disciplinary action by expelling him from the party for the alleged anti party activities and thus he continues to be member of BJP till date. As a matter of fact in the list of Legislature submitted by BJP to the Hon'ble Speaker on 30-03-2007 the name of Sri Ravindra Kumar Rai is mentioned. Therefore, it is submitted that till date Sri Ravindra Kumar Rai is a member of BJP and has not joined any political party. He further mentioned in his reply that Sri Ravindra Kumar Rai had not joined JVM and the allegations labelled against him by S.P. Kerketta is not correct. However, JVM was registered before the Election Commission of India as a political party on 08-01-2007 and hence the newspaper clippings were of no use i.e. completely invalid.

- (50) That it has been categorically refuted by Sri Ravindra Kumar Rai in his reply that the newspaper reports are incorrect and they do not constitute evidence in the eye of law. On various occasions it was held by the Court as for example in the case of Kusumlata Vs. Union of India 2006 (6) SCC 180 the court stated "it is also noticed that petitions are based on newspaper reports without any attempt to verify their authenticity. As observed by this Court in several cases news paper reports do not constitute evidence. A petition based on unconfirmed news reports without verifying their authenticity should normally not be entertained as noted above. Such petition do not provide basis for verifying the correctness of statement made and the information given in the petition. It would be desirable for the court to filter out the frivolous petition and dismiss them with costs and aforesaid. So that the message goes in the right direction that petition filed with oblique motive do not have approval of the Court."

- (51) In union of India Vs. Ranvir Singh Rathor 2006(3) SCALE 352:(2006) 11 SCC 696 para 42 also the Court inter alia held "newspaper reports are not be considered as evidence. The authenticity of the news paper reports was not established by the writ petitioners."



(52) He further stated that so far as the case of Ravi S. Nayak is concerned it is not relevant to the present case. In that case the term conduct was taken to refer to individual acts of two Members of the Goa Legislative Assembly belonging to Maharashtra Gomantak Party (MGP), which unequivocally demonstrated that they had voluntarily given up the membership of their party. It would be seen that the components of the conduct in question were; giving to the Governor accompanying the leader of a rival party to stake claim to form an alternative government against their party MGP "the fact of giving to the Governor the said accompanying not denied by the two members at any stage."

(53) Not controverting a clear statement made before the Speaker to the effect that the two members had given up the Membership of their party MGP and had said so openly. "The two members were physically present and had every opportunity to deny the points made in the statement but they did not do so."

Actually putting their signature on a resolution for the formation of a new rival party viz. Congress Democratic Front (CDF).

The High Court and then the Supreme court taken into consideration the combined effect of these acts to determine that together they constitute conduct which in effect made that they had voluntarily given up the Membership of their party viz. MGP. Thus there was enough direct and documentary evidence to establish a conduct which could be deemed to voluntarily giving up the Membership of their party.

(54) In the present case it is completely different. Nothing could constitute such conduct. He has also not produced any direct or documentary evidence to support his vague allegation that the respondent had given up the membership of the party. Mr. Ravindra Kumar Rai further stated that the reliance placed by the petitioners on Rajendra Singh Rana Vs. Swami Prasad Maurya 2007(4) SCC 270 is also of no help to them as the cases mainly revolve around split and/or in a merger party. So far in para 2 (a) of 10<sup>th</sup> Schedule is concerned, the Supreme Court held that in the case of erring Legislature of U.P. State Assembly as there was direct evidence that they had approached the Governor along with the leader of the opposition and submitted letters requesting the Governor to invite the leader of that opposition party to form the Government as against the advice of the Chief Minister belonging to their original party to dissolve the Assembly. In the instant case it is alleged that Sri Ravindra Kumar Rai had accompanied Sri Babu Lal Marandi and met the Governor with a request to impose President Rule in the State which the BJP has also itself demanded and for this purpose a delegation led by Sri P.N. Singh (the then BJP State President) had also met the Governor. Thus it can not be said that Sri Ravindra Kumar Rai had acted against the party's interest or had violated any order or mandate of the party. Moreover, BJP has never informed Sri Ravindra Kumar Rai about its decision that they would also make request to the Governor for imposing of President Rule in the State. Moreover, as a people's representative and having regard to the state of affairs in the State Sri Ravindra Kumar Rai was duty bound to bring to the notice of His Excellency, the Governor of Jharkhand about the prevalent condition for taking appropriate actions. From aforesaid actions of Sri Ravindra Kumar Rai can not in any manner indicate that he had voluntarily given up his membership of BJP. One can not lose sight of the duty cast upon every legislature to protect the protest of the people of the State as also upholds the Constitution of India, therefore, it is submitted that the aforesaid case of Sri Rajendra Singh Rana (Supra) in no way supports the contentions of the petitioners in the present facts and circumstances.

(55) Again the respondent stated that Jagjit Singh vs. State of Haryana and other 2006(11) SCC 1 is also not applicable in this case. The counsels of the petitioners by relying on the said judgement have contended that Hon'ble Speaker can rely upon his personal knowledge to come to a conclusion whether the legislature stands disqualified under the 10<sup>th</sup> Schedule or



- not. The said submission is devoid of any merit as the said proposition was laid down on a different factual background and in a different context. In this case there is no material on record to establish the contents of the newspaper reports nor any supporting evidence corroborating the allegations have been brought forward by the petitioners herein and thus it is submitted that the ratio of case of Jagjit Singh has no applicability to the facts of this case.
- (56) The respondent further stated so far as case of Kihoto Hollohan vs. Zachillhu and other 1992(1)(b) SCC 309 is concerned it says that disqualification imposed by Para 2 (1) b must be so constructed as not to unduly impinge in the freedom of speech of a manner. Para 2(1)(b) would have to be limited to a vote of motion of confidence or no confidence in the Government or were the motion under consideration relates to a matter which was internal policy and programme of a political party on the basis of which it approached the electorate.
- (57) In the concluding para of the written reply respondent stated that Sri. C.P. Singh, leader BJP, had filed his affidavit and in his affidavit he has not stated anything that Sri Ravindra Kumar Rai had done any act which is against BJP rather he had alleged that Sri Ravindra Kumar Rai did not participate in the activity of the BJP. It is relevant to mention herein that the party had suspended Sri Ravindra Kumar Rai so because of this Sri Ravindra Kumar Rai was not invited in the meeting and other activity of the BJP party and that is why Sri Ravindra Kumar Rai have not attended and participated in the occasions and activities of the party.
- (57) Mr. Arjun Munda petitioner has filed a counter affidavit dated 2<sup>nd</sup> March, 2009 which was received in the Assembly Secretariat on 16<sup>th</sup> March, 2009. The petitioner requested that being the leader of Legislative party and Bharatiya Janata Party. He had moved an application under 2(1)(a) of 10<sup>th</sup> Schedule read with article 191 of Constitution of India for disqualification of the opposite party i.e. Ravindra Kumar Rai on the ground of his having been voluntarily given up membership of political party of BJP. The main object of the counter affidavit is that the suspension of Mr. Ravindra Kumar Rai was revoked by the Bharatiya Janata Party and now he is working as a bona-fide and sincere member of Bharatiya Janata Party. It is also mentioned that the entire misunderstanding and the communication gap between the opposite party and BJP has been sorted out and the opposition party is fully participating in the activities/proceedings of the political party BJP Mr. Arjun Munda.
58. Again stated that in the aforesaid facts circumstances has taken place subsequently during the tendency of the instant matter and particularly when the suspension of the opposite party has been revoked and the entire misunderstanding has been sorted out the petitioner himself to place the matter of disqualification of the opposite party.
59. Again it is stated and submitted that the opposite party is participating and co-operating all party activities as a member and hence the entire proceeding may be dropped against him. Ultimately the petitioner Mr. Arjun Munda prayed that your honour may graciously please do not proceed in the matter of disqualification of the opposite party any further and be please to drop the entire proceeding initiated under 2(1)(a) of the 10<sup>th</sup> Schedule against the opposite party and/or passed such order. Further order as your honour may deem fit and proper in the interest of justice.
60. Before reaching the conclusion it is pertinent to state here about the provisions of 52nd Amendment concept of 10th Schedule position of the Speaker, role of the Speaker etc. which were established on various occasions either by the Hon'ble Supreme Court, Hon'ble High Court or by several eminent Parliamentarians.
61. The main object of the 10th Schedule is as follows:  
 "The evil of political defection has been a matter of national concern. If it is not combated which is likely to undermine the very foundation of our democracy and the principles with the object an assurance was given in the address by the President to the Parliament that the Government intended to introduce in the current session of Parliament an anti defection bill. The bill is meant for outline defection and fulfilling the above assurance."



62. The purpose for enacting the constitution (52nd Amendment) that is incorporation of the 10th Schedule and other amendments was not only to stabilize the legally elected government and to prevent the political immorality but also to make them effective if the provisions are laid down the main purpose would be defeated (Prakash Singh Badal Vs. Union of India AIR 1987 P & H 263 FB).
63. The object is to curban evil of political defections motivated by lure of offices or other similar Constitutions which endanger the foundations of our democracy. (Kihotto Hollohan Vs. Zachillhu AIR 1993 Supreme Court 412).
64. G V. Mavalankar who was most distinguishing occupant and that high offices "in Parliamentary democracy the offices of the Speaker is held in very high offices and respect. There are many reasons for this some of them are purely historical and some are inherent in the concept of Parliamentary democracy and the powers and duties of the Speaker. Once a person is elected Speaker he is expected to be above parties, above politics. In other words he belongs to all the members or belongs to none. He holds the scale of justice irrespective of party or person though anyone expect that he will do absolute justice in all matters because as a human being he has his drawbacks and shortcomings. However, everybody knows that he will intensely do not injustice or so partiality such a person is only respect by all."
65. The Speaker/Chairman holds a pivotal position in the scheme of the Parliamentary democracy and a guardian of the right and privileges of the House. It would indeed be unfair to the high tradition of that great office to say that the investiture in it of determinative jurisdiction under the 10th Schedule would be vitiated for violation of a basic feature of a democracy (Kihotto Hollohan Vs. Zachillhu 1992 Supplementary (2) SCC 651).
66. Pandit Nehru referring to the office of the Speaker stated "the Speaker represents the House, he represents the dignity of the House, the freedom of the House and because the House represents the nation in a particular way. The Speaker becomes the symbol of the nation's freedom and liberty. Therefore, it is right that Speaker should at an honoured position, free position and should be occupied always by a man of outstanding ability and impartiality."
67. Before coming to the conclusion it is necessary to mention here para 2(1)(a) and (b) of the 10th Schedule.

**Disqualification on ground of defection -** (1) Subject to the provision of paragraphs 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House-

- (a) if he has voluntarily given up his membership of such political party; or
  - (b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within 15 days from the date of such voting or abstention.
68. In regard to the various contentions raised and urged at the hearing the Supreme Court held that the paragraph 2 of the 10th Schedule of the Constitution is valid, its provisions do not suffer from the vice of subverting democratic rights of elected members of Parliament and the Legislatures of the States. It does not violate their freedom of speech, freedom of vote and conscience as contended. The provisions of paragraph 2 do not violate any rights or freedom under Article 105 and 194 of the Constitution. The provisions are salutary and are intended to strengthen the fabric of Indian Parliamentary democracy by curbing unprincipled and unethical political defections.
  69. The Speaker's function under the 10th Schedule called for a judicial determination of issued under the law hence the whole matter was seen on the canvass of para 6(1) of the 10th Schedule which is as follows:



**Decision on questions as to disqualification on ground of defection:** (i) if any question arises as to whether a Member of a House has become subject to disqualification under this schedule the question shall be referred for the decision of the Chairman or as the case may be. The Speaker of such House and his decision shall be final.

Provided that where the question, which has arisen, is as to whether the Chairman or the Speaker of a House has become subject to such disqualification. The question shall be referred for the decision of such Member of the House as the House may elect. In this behalf his decision shall be final.

70. The petitioner Mr. Arjun Munda relied upon the judgement of Rajya Sabha in the case of Mr. Jai Narayan Prasad Nishad, Member of Parliament from Rajya Sabha disqualified on the basis of report of the Committee of privileges of Rajya Sabha which was chaired by Mr. K. Rahman Khan, Chairman to the Committee of privileges. The petition was filed by Mrs. Sushma Swaraj for disqualification of Jai Narayan Prasad Nishad from the membership of Rajya Sabha. Mr. Jai Narayan Prasad Nishad was a member of Rajya Sabha from BJP has subjected himself to the disqualification under the 10<sup>th</sup> Schedule vide his letter dated 18<sup>th</sup> October, 2005 addressed to the Bihar State President of the BJP, he resigned from the primary membership of the party and thus voluntarily relinquished the membership of the party.
71. According to the petitioner immediately after his resignation Sri Nishad has indulged in anti party activity during the elections to the Bihar Legislative Assembly and openly started campaigning against BJP and other candidates of NDA citing various newspapers which had published campaign programme of Sri Nishad along with member of Rashtriya Janata Dal. According to the petitioner Sri Nishad had also publicly declared that after resigning from the BJP. He would relinquish his membership of Rajya Sabha and submitting his resignation to the Chairman, Rajya Sabha but he could not do so and later he withdraws the resignation by his letter dated 17<sup>th</sup> November, 2005.
72. It is very much clear from newspaper cuttings that Mr. Nishad was indulged in the anti party activities like campaigning against the NDA candidates by supporting RJD candidate. Mr. Nishad said that appearing in the newspaper showing the name of Sri Nishad and he would campaign for RJD in the Assembly elections. Sri Nishad stated that it was reported but he do not go anywhere for campaigning on being specifically asked whether he issued any rebuttal to the RJD or the newspaper publishing his name with the campaign advertisement of RJD? Sri Nishad replied that since he was not going anywhere. There was no need for rebuttal Sri Nishad denied having either campaign for his son who contested as a candidate for RJD in Assembly elections or having addressed public meetings from the forum of RJD on being questioned he further stated that he had written to concerned newspapers to the effect that his name and statement appearing therein were wrongly quoted when committee desired a copy of those letters written by him to the newspapers, Sri Nishad stated that he would have to search for the same. He however, further admitted that none of his statements rebutting the impugned news/advertisements was published in the newspapers.
73. The petitioner has further relied on the alleged anti party activities of Sri Nishad. On the basis of his statement appearing in the media and other news reports.
74. The Committee feels that the onus of disproving the allegations labelled in the petition lies on Sri Nishad and the respondent Mr. Nishad was fail to disprove the media reports suggesting in the absence of any categorical rebuttal that he was willingly allowing his name to be used for campaigning for another political party immediately after tendering his resignation. It is well established that the respondent was failed to send a rebuttal to the newspaper or to contradict the news published in the print media.



75. In addition to that Mr. Nishad claimed that the party deducted Rs.1200/- per month as subscription fee from his bank account till 10<sup>th</sup> December, 2005. Hence he was a bona-fide member of BJP. The Committee noted that an amount Rs.1200/- being deducted from the Bank account from Sri Nishad until 10<sup>th</sup> December, 2005 which according to Sri Nishad, was the subscription fee for membership of the BJP, Regarding this one, the privilege committee of Rajya Sabha is of the opinion that it is a routine exercise done in a mechanical manner by the party's office bearers. The Committee would like to take a similar view in the case of deduction of subscription fee from the Bank account of Sri Nishad which continued to be so deducted until 10<sup>th</sup> December, 2005. The Committee is, therefore, of the opinion that all these acts on the part of the office bearers of BJP do not necessarily suggest that they were treating Sri Nishad as a Member of the Legislative Party of the BJP in Rajya Sabha.
76. The Committee moreover feels the fact of not sending the information about his suspension to the Chairman, Rajya Sabha does not materially change the position, in his favour particularly when he has voluntarily given up the membership.
77. It is pertinent to mention here that the respondent has filed an affidavit on 06/08/2007 and in the para 6.10 it is submitted by the respondent that Bharatiya Janata Party has submitted the list of Members to the Hon'ble Speaker as per the demand and in the last name of MLA submitted by the Bharatiya Janata Party the name of the respondent also appears.
78. It can be quashed on the basis of the report of privilege committee of Rajya Sabha in Jai Narayan Prasad Nishad case and it was held by the Committee that Sri Nishad has, referring to sub Rule 1(a) of Rule 3 of the rules, also stated that no information pertaining to change in the strength of BJP Legislature Party in Rajya Sabha or the information required to be furnished in form 1, in respect of all the Members of Legislature Party to the Chairman, Rajya Sabha was given by the leader of the BJP in Rajya Sabha. By referring to the relevant provisions of the rules, Sri Nishad, in Committee's view, implied to mean that had his resignation from the primary membership been assumed have taken effect the information required under the rules should have been furnished to the Chairman, Rajya Sabha by the leader of the BJP in the Rajya Sabha and since no such information was given it could be presumed that his resignation did not take effect.
79. As regards non furnishing of requisite information by the leader of BJP, as provided under our sub Rule 1(a) of Rule 3 of the Rules to the Chairman, Rajya Sabha. The Committee would like to observe that in action on the part of leader of the BJP in the matter of furnishing information in respect of Members of the Legislature Party in the Rajya Sabha or particular, in respect of change in that information to the Chairman, Rajya Sabha does not have any bearing on the position of Sri Nishad if he had voluntarily given up his membership of his party. The Committee opines that it is a procedural infirmity in the implementation of the provisions of the Rules and would like to leave it to the discretion of the Chairman, Rajya Sabha for issuing the appropriate guidelines on the issue.
80. In the last, Committee is therefore, of the opinion that in pursuance of paragraph 2(1)(a) of the 10<sup>th</sup> Schedule to the Constitution, Sri Jai Narayan Prasad Nishad had incurred disqualification for being a Member of Rajya Sabha.
81. In the matter of Ravi S. Nayak Vs. Union of India, AIR 1994 SC 1558 (Para 11) : 1994 Supp. 2 SCC 641
82. The Supreme Court had further held : the expression "Voluntary given up his membership" in para 2(1)(a) does not hold the same meaning as of "Resignation", it implies a wider connotation. A membership of a political party can be given up voluntarily by any member without even tendering resignation to that party, an inference about his voluntarily given up of membership can be drawn from the conduct of that member.



The entire case is based upon the following questions:

1. Whether he has voluntarily given up his membership of BJP?
2. Whether he has participated in meetings or other campaigning programme of Jharkhand Vikas Morcha during the Parliamentary election of Koderma, Palamu and Jamshedpur and on various occasions in different part of the State after getting show cause notice why he should not reply?
3. Whether he was loyal with original party BJP if the charges/allegations labelled by Mr. Arjun Munda, petitioner was withdrawn then can it be possible to withdraw the petition which is filed before the Speaker?
4. Rebuttal of newspaper cuttings were necessary or not?
5. Inside the House whether he obeys the directions, whips of the party authority?
6. During the Rajya Sabha Elections whether he obeyed the party directions.
7. Whether the entire document is to be verified in accordance with CPC 1908 or it is not necessary.

83. Keeping in mind all the aspects of the facts of both side I am of the opinion that the respondent was not loyal with his original party i.e. BJP, he has casted his second preference vote in favour of independent candidate Mr. Parimal Nathwani, during the Rajya Sabha Election contrary to the party direction. His statement before the print media was not denied and from that angle it is more or less similar to the case of Sri Jai Narayan Nishad in Rajya Sabha.
84. Once the petition is filed before the Speaker under 10<sup>th</sup> Schedule and cognizance was taken by the Speaker then there is no way to withdraw the petition even on the request of petitioner.
85. Inside the House in most of the occasion either he boycotted from the House or remained in the House contrary to the decision of the party leader.
86. The court is of the view that petitioner has produced valid and substantial evidence and the respondent could not be capable to satisfy the court by keeping valid evidences. In the case of Dr. Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council and others the Hon'ble Supreme Court has held that there is no provision in the 10<sup>th</sup> Schedule to the effect that until a petition which is signed and verify in the manner led down in CPC for verification of pleadings is made to the Chairman or the Speaker of the House he will not get the jurisdiction to give a decision as to whether a member of the House has become to subject to disqualification under the Schedule. The purpose of Rule 6 and 7 is only that the necessary facts on account of which a member of the House becomes disqualified for being a Member of the House under paragraph 2 may be brought to the notice of the Chairman. There is no lis between the person moving the petition and a member of the House who is alleged to have incurred a disqualification it is not an adversarial kind of litigation where he may be required to lead evidence even if he withdraws the petition it will met no difference as a duties as cast upon the Chairman or the Speaker to carry out the mandate of the Constitutional provision viz. the 10<sup>th</sup> Schedule.
87. The object of Rule 6 is that frivolous petition making falls allegation may not be filed in order to cause harassment it is not possible to give strict interpretation to Rules 6 and 7 otherwise the very object of the Constitution 52<sup>nd</sup> amendment Act by which the 10<sup>th</sup> Schedule was added would be defeated the validity of the rules can be sustained only if they are held to directory in nature as otherwise on strict interpretation. They would be rendered ultra vires, the provisions of Rules 6 and 7 are directory in nature and on account of non filing of an affidavit as required by order this Rule 15(4) CPC. The petition would neather be rendered invalid nor would assumption of jurisdiction by the Chairman on its basis be adversely effect or rendered bad in any manner.



**ORDER**

Therefore, the petition is disposed of as follows:

- (i) The request made by the petitioners in the application is allowable and is allowed with respect to the respondent at this point of time.
- (ii) Under the 10<sup>th</sup> Schedule of the Constitution of India and the Jharkhand Legislative Assembly Members (disqualification on the ground of defection) Rules, 2006. It is decided that Sri Ravindra Kumar Rai has incurred disqualification for being a member of Jharkhand Vidhan Sabha and has ceased to be a member of Jharkhand Vidhan Sabha with effect from the date of this order.
- (iii) The case is closed.
- (iv) Other necessary steps may be taken in terms of the law and the rules.

(Alamgir Alam)

Speaker

Jharkhand Legislative Assembly

Ranchi

Dated : the 13<sup>th</sup> August, 2009